IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.6938 of 2002
and
W.M.P.No.9580 of 2002

G.Johnrose ... Petitioner

-Vs-

1.Kuzhithurai Municipality
represented by its Commissioner
Kuzhithurai.

2.The Director of Municipal
Administration, Ezhilagam,
Chepauk, Chennai 600 005.

3.The Registrar
Tamilnadu Administrative Tribunal
High Court Buildings, Chennai-104. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R.Damodaran

For Respondent - 2 : Mr.S.T.S.Murthy
Special Govt.Pleader

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

Rule returnable forthwith. The learned Special Government Pleader takes notice for the second respondent.

2. The petitioner herein worked as a casual labourer for some days during the years 1994 to 1997. Every year he worked for some days whenever

work was available. It is an admitted position that he was not employed through the employment exchange. Finding that in the year 1 998 he was given no work, the petitioner approached the Tamil Nadu Administrative Tribunal (hereinafter referred to as 'the Tribunal') by way of an original application and his main stay was that though he has worked for more than 240 days in each of the previous years, he was not either regularised or given work in the year 1998. The tribunal has dismissed the original application, holding that the petitioner had no right whatsoever and it could not be said that the petitioner had put in sufficient number of years of service to be considered for regularisation. The tribunal also took note of the fact that the petitioner was not employed through employment exchange. It is against this judgment that the present writ petition is filed.

3. Learned counsel for the petitioner very fervently argues that the petitioner is 42 years old, he is a post graduate holding all the qualifications for being appointed as a Junior Assistant and inspite of that, he is not being regularised nor was he given the work during the year 1998. Learned counsel points out that this court as well as the Apex Court have held that those persons who completed 240 days of service should be regularised and it is that right, on the basis of which the petitioner has claimed the regularisation.

4. It will be very difficult for us to lay down as a general proposition that all those persons who worked for 240 days shall automatically get the right of being regularised. We do not find any such rule, nor was any such rule canvassed before us. Such rule, indeed, cannot be there because as far as 240 days are concerned, that is a concept brought in under the labour jurisprudence and more particularly by Section 25F of the Industrial Disputes Act. The workman who has worked for more than 240 days in the previous year gets a right not to be retrenched unless the retrenchment compensation is paid to him and unless he is served with a proper notice. The Supreme Court as well as this Court have been leaning in favour of the employees who have completed continuous service of more than 5 years or 10 years of service as the casual labourers. That has been done on the basis that the workers cannot be kept under the cloud of insecurity for years together. The Apex court has also taken a note that if the concerned person was required to work for more than 5 years or 10 years, as the case may be, it would mean that there was a need for such a post and therefore the workman who was working for a long period was bound to be continued or regularised. Such is not the case here. This worker has sporadically worked during the years 1994 to 1997, and that too he has stolen a march over the other candidates, who were bound to be employed through employment exchange. It is not disputed that the entry into the service has to be made through employment exchange. Under the circumstances, we find ourselves unable to agree with the learned counsel that any right is created in his favour because of his working for three or four years, that too very sporadically.

5. It is not disputed that the worker was appointed as per Rule 3(c)(i) of the Tamil Nadu Municipal General Service Rules, 1970. Such appointments can never ripen into a permanent appointment by the very wording of the said rule, which reads that they are in the nature of an emergency appointments and they do not create any right in the person who serves.

6. Three decisions were cited before us by the learned counsel, they being, "UNION OF INDIA -VS- DHARAM PAL (1996 4 S.C.C.195)", "DAILY RATED CASUAL LABOUR -VS- UNION OF INDIA (1988 1 S.C.C.122)" and " STATE OF HARYANA -VS- PIARA SINGH (1992 4 S.C.C.118)". We have given our anxious consideration to all the three judgments. However, we are unable to find any similarity on the facts in this case. True it is that the tone of the apex court in this case is pro-employees, but then in all these cases, the employees had been working for sufficiently long number of years so that the apex court in all the three cases felt the need to regularise the services of those employees. On the other hand, in "STATE OF HARYANA -VS- PIARA SINGH", the Supreme Court in para 33 has passed a word of caution against passing general orders regularising the workers. The Supreme Court has held as follows:-

"33. Now coming to the direction that all those ad hoc/temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him – which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are in addition to some of the problems indicated by us in para 25, which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no 'rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this standpoint, the impugned directions must be held to be totally untenable and unsustainable."

7. Relying on the above paragraph, we are of the opinion that the petition has no merits and hence it is dismissed. This is apart from the fact that the petitioner has not yet been able to explain that as to what the petitioner was doing from 1994 to 1998 when he decided to approach the tribunal. However, this is an additional reason for dismissing the petition. Consequently, connected W.M.P.No.9580 of 2002 is also dismissed. No costs.

(V.S.S,J.)(F.M.I.K, J.)
02.09.2002

Index : Yes
Website : Yes

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To :

1.The Commissioner, Kuzhithurai Municipality, Kuzhithurai.
2.The Director of Municipal Administration, Ezhilagam,
Chepauk, Chennai 600 005.
3.The Registrar, Tamilnadu Administrative Tribunal
High Court Buildings, Chennai-104.

V.S.SIRPURKAR, J.
AND
F.M.IBRAHIM KALIFULLA, J.